MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Allen F. Hauser, et al.,
Appellants-Defendants,

v.

David Hauser,
Appellee-Plaintiff.

November 18, 2022

Court of Appeals Case No. 22A-PL-655

Appeal from the Porter Superior Court

The Honorable Michael A. Fish, Judge

Trial Court Cause No. 64D01-1911-PL-10738

Altice, Judge.

Case Summary

[1] Allen F. Hauser (Allen), individually and as Trustee of Trust No. 103128,[1] Janet Hauser (Janet), A.F. Hauser, Inc. (Hauser, Inc.), and Hauser, LLC (collectively, Hausers), appeal the grant of partial summary judgment in favor of David Hauser (David), an employee and shareholder of Hauser, Inc. Hausers claim that the trial court erroneously determined that a buy/sell agreement (the Agreement) executed by Hauser Inc.'s shareholders also constituted a contract of employment as to David. Hausers further maintain that the trial court erred in awarding the damages and remedies that David requested for their alleged violations of Indiana's Wage Claim Act, breach of contract, and breach of fiduciary duty because the designated evidence established that David was an at-will employee of Hauser, Inc. and, therefore, those actions and remedies were not available to him.

[2] We affirm and remand.

Facts and Procedural History

[3] Hauser, Inc. is a family-owned wholesale/distributor pharmaceutical company in Porter County. The business began in 1984 and became incorporated in

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[1] The trust is a current shareholder of Hauser, Inc. and owns "193 of the 375 total shares." *Appellants' Appendix Vol. 2* at 25.

1993. Hauser, LLC, which was organized in 2010, owns the real estate and building where the business operates. Allen—David and Janet's father—is Hauser, Inc. and Hauser, LLC's president. Allen is also the majority shareholder of Hauser, Inc. and the majority member of Hauser, LLC.

[4] David began working as a salesman for Hauser, Inc. in 1986. He and Janet became minority shareholders of Hauser, Inc. in 1999.[2] On December 31, 1999, Hauser, Inc. and its shareholders entered into the Agreement. The signatories of the Agreement included David, Allen, and Janet.

[5] The Agreement provides in relevant part that

> Termination for cause shall include but not be limited to any of the following reasons:
>
> (a) *Failure to perform duties faithfully, diligently, competently and to the best of the employee's ability*, other than for reasons such as physical disability or incapacity.
>
> (b) Appearing at work or meeting with customers or clients when intoxicated from liquor or drugs other than those drugs prescribed by a doctor.
>
> (c) Disclosing of trade secrets and customer lists to competitors.

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[2] David was also a member of Hauser Inc.'s Board of Directors and remained in that position until March 26, 2021.

(d) Absences from work under unauthorized non-medical leave other than for vacation in excess of ten (10) calendar days per month.

(e) Insubordination or persistent disregard to the rules and procedures of the CORPORATION regarding sales and supervision or continually causing disharmony among other employees of the CORPORATION.

No warning need be given to any employee for proper cause other than unsatisfactory performance of work. In the event that it is determined that the termination was improper, the employee shall be reinstated and fully compensated for the time loss resulting from termination and shall retain such Stock that was sold.

Appellants' Appendix Vol. 2 at 171-73 (emphases added).

[6] The Agreement further provided that

The employment of Allen F. Hauser, Janet M. Hauser and/or David R. Hauser shall continue at full salary during periods of sickness or disability subject to verification as stated below.

. . .

At the expiration of the one (1) year period wherein the employee is disabled such that he/she is unable to perform his/her duties for the CORPORATION, the CORPORATION may then acquire the Stock of such disabled employee-SHAREHOLDER at a price determined in accordance with section 7. . . .

. . .

Because of the importance of the full-time employment and attention to the performance of duties to the CORPORATION

> by Allen F. Hauser, Janet M. Hauser and David R. Hauser, there is a need that said SHAREHOLDERS remain in the full-time employment of the CORPORATION. If any SHAREHOLDER would desire to retire, normal retirement age to be considered as unlimited, then the CORPORATION and the surviving SHAREHOLDERS shall have the right to acquire said retiring SHAREHOLDER'S Stock by giving notice of acceptance to acquire said Stock within thirty (30) days after said employee-Shareholder announces such retirement.
>
> . . .
>
> Because of the importance of full-time employment to the parties to this Agreement, *if any SHAREHOLDER who is a party to this Agreement should be terminated from the service of the CORPORATION for cause, then within one hundred fifty (150) days of said termination, said SHAREHOLDER shall make his/her Stock available for purchase by the CORPORATION and the other SHAREHOLDERS.*

Id. at 121-26 (emphases added).

[7] At Allen's instruction, Hauser Inc.'s accountant began deducting health insurance premiums from David's salary beginning in January 2019. For at least twelve years prior, Hauser Inc. had paid those premiums for David and his family. David never agreed to a pay reduction, and Allen decided to reduce David's pay and "just kind of whittle away until he terminated Dave. . . ." *Id.* at 148.

[8] Notwithstanding the deductions, David continued to work for Hauser, Inc. from January 1, 2019, until he was terminated from employment on May 29, 2019.[3] Hauser Inc.'s executive committee made the decision to terminate David's employment for a variety of reasons, including David's "failure to perform his duties as an employee . . . in a manner that would be considered as diligent as he has in the past and to the best of his ability." *Id.* at 228-31. Hauser, Inc. also alleged that David created a hostile work environment because he openly used profanity and harassed other employees at work. It is undisputed that David was never warned about his poor work performance or behavior at work prior to his termination.

[9] At the time of termination, David was earning an annual salary of $260,000 per year, which amounted to $10,000 every two weeks. The regular pay date for David's last two-week pay period—which included the May 29, 2019 termination date—was June 7, 2019. However, David did not receive his final paycheck until June 21, 2019.

[10] On September 18, 2019, David filed a wage claim with the Indiana Department of Labor (DOL), which subsequently assigned the pursuit of his claim to

[3] Although David's employment with Hauser, Inc. was terminated, he remained a minority shareholder of that company and a minority member of Hauser, LLC.

David's attorneys. David alleged that Hauser, Inc. failed to pay him a total of $33,130.40 in earned wages.[4]

[11] On November 14, 2019, David filed a complaint in the trial court against Hausers asserting wage claims, breach of contract, and breach of fiduciary duty. David claimed that the Agreement guaranteed him full-time employment subject only to termination for cause, retirement, death, or disability for a continuous period exceeding one year. David alleged that Hausers terminated his employment without cause, and they wrongfully reduced his salary by improperly denying him agreed-upon employment benefits. David claimed that Hausers' unilateral reduction of his salary and failing to issue his final paycheck in a timely manner violated the provisions of the Indiana Wage Claim Act. David also claimed that Hausers' oppressive conduct in forcing him out of the company, along with certain members' alleged misappropriation of corporate assets for personal use, amounted to a breach of fiduciary duty of loyalty and impartiality. Thus, David requested damages in the amount of "at least $1.5 million, plus punitive damages of at least $4.5 million" for those breaches. *Appellants' Appendix Vol. II* at 30.

[12] David also requested pre- and post-judgment interest, attorneys' fees, and costs of the action. Finally, David requested that the trial court order Hausers to repurchase his shares of stock in Hauser, Inc. "for their fair value" as a result of

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[4] David's claim that he filed with the DOL set forth the specific amount of his unpaid wages from January 4, 2019 through June 2, 2019 and an additional amount for liquidated damages.

the breaches of fiduciary duty. *Id.* Hausers filed an answer to the complaint denying the allegations and advanced counterclaims against David for breach of contract, violation of the Uniform Trade Secrets Act, conversion, and breach of fiduciary duty.

[13] On November 30, 2021, Hausers filed a motion for partial summary judgment, claiming that they were entitled to judgment as a matter of law on David's breach of contract claims because they had no obligation under the Agreement to purchase David's shares. Hausers also asserted that the Agreement did not constitute an employment contract and, therefore, David's wrongful termination claims and wage claims failed as a matter of law because he was an employee at will. Hausers further asserted that David's breach of fiduciary duty claim was limited to a two-year statute of limitations, and that David was not entitled to recover interest and/or attorneys' fees on any of his claims.

[14] That same day, David filed a motion for summary judgment, supporting memorandum, and designation of evidence. David asserted that he was entitled to summary judgment on all claims because

> a. The [Agreement] between David and his fellow shareholders requires prior notice of poor work performance before David could be terminated by [Hauser, Inc.];
>
> b. The [Agreement] creates a right of employment for shareholders and a right of reinstatement if David was improperly terminated;

> c. The designated evidence undisputedly shows that David has not competed with Hauser, Inc. since his termination, so Hauser, Inc., Janet, and Allen's claims for breach of the non-competition provisions in the [Agreement] fail;
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> d. The designated evidence undisputedly shows that David has not taken any trade secrets belonging to Hauser, Inc., so Hauser, Inc.'s claim for misappropriation fails;
>
> e. The designated evidence undisputedly shows that Janet and Allen do not own any trade secrets and, even if they did, David did not misappropriate any trade secrets belonging to these individuals, so Janet and Allen's claims for misappropriation fail; and
>
> f. The designated evidence undisputedly shows that David's wages were improperly cut by Hauser, Inc., which violates Indiana's Wage Claims statute – David is entitled to summary judgment on this claim.

Appellants' Appendix Vol. 3 at 2-3.

[15] Following a hearing on the parties' respective motions on February 3, 2022, the trial court granted, in part, David's motion for summary judgment. The trial court's order states in relevant part that

> At the outset, the Court finds that the [Agreement] between the parties is unambiguous. The Court will not consider parol evidence.
>
> *The Court determines that, as a matter of law, the [Agreement] rebutted David's employment at will*.

In this case, the provision in the [Agreement] requiring a 'for cause' determination with prior notice impacted David's 'at-will' status.

The Court further determines that, as a matter of law, Defendants' conduct in refusing to buy David's stock shares is shareholder oppression. Further, that a forced buy-back is an appropriate remedy.

Concerning other breach of fiduciary allegations, the Court finds that, as a matter of law, a 2-year statute of limitation applies in a fiduciary duty claim, subject to the discovery rule.

The determination of whether David was properly terminated for cause is a question for the jury. *However, the Court finds the undisputed facts demonstrate that David was not notified of any 'unsatisfactory performance of work' issues prior to his termination.*

The Court finds that the undisputed facts support a conclusion of law that *David's wages were improperly reduced and his health insurance improperly deducted from his pay. Summary judgment in David's favor is appropriate on his wage claim.*

Moreover, prejudgment interest may be available for an award of contract or intentional tort damages. The trier of fact need always exercise its judgment to determine the liability for damages. But, prejudgment interest is proper where the trier of fact need not exercise its judgment to assess the amount of damages. . . . Thus, prejudgment interest can be available in the breach of contract claim.

The Court agrees that the statutory prejudgment interest notification procedure does not apply to the tort claim, and prejudgment interest might be available on it.

On the wage claim, the Court finds that prejudgment interest is readily available and required by law.

Regarding attorney fees, an award of attorney fees as liquidated damages is part and parcel of a wage claim award. Attorney fees may also be available under the 'General recovery rule' at Ind. Code § 34-52-1-1, but no facts or request for those fees is pending before the court.

Accordingly, judgment is entered as follows:

1. [Hausers'] Motion for Partial Summary Judgment is DENIED.

2. [David] is GRANTED Summary Judgment as follows:

A. *As a matter of law, the [Agreement] between David, Allen, Trust, Janet, and Hauser, Inc. rebutted David's employment at-will with Hauser, Inc. David is entitled to continued employment with Hauser, Inc. and reinstatement unless the jury determines that David was properly terminated for cause*.

B. As a matter of law, [Hausers'] conduct in refusing to buy David's stock shares is shareholder oppression. Forced buy-back of shares is an appropriate remedy.

C. *As a matter of law, the [Agreement] requires notice of poor work performance before termination of an employee-shareholder, and the undisputed facts demonstrate that David received no such notice.*

D. *David is awarded damages on his Wage Claim (Count IV) in the amount of $33,130.40, liquidated damages of $76,260.80, prejudgment interest from June 7, 2019 through February 24, 2022 at $23.97 per day (993 days) which sum is $23,802.21, costs, and attorney fees.*

E. *Attorney fees shall be determined at a future hearing.*

3. Issues remaining for trial include:

A. Whether David was properly terminated for cause.

B. A determination of the value of shares in a forced buy-back of David's shares by Hauser Inc.

C. A determination regarding any additional breaches of fiduciary duty (other than shareholder oppression) and any damages related thereto.

D. [David's] cause of action for declaratory judgment.

Appellants' Appendix Vol. 4 at 128-130.

[16] On March 8, 2022, Hausers filed a motion to correct error claiming, among other things, that the trial court "entered relief not sought by [David], namely the equitable remedy of a forced buy-back of shares." *Id.* at 143. Hausers further alleged that the trial court went beyond the relief that David requested when it addressed the issue as to whether David "was not given notice of poor work performance prior to his termination." *Id.* David responded to the motion to correct error, agreeing that the summary judgment order should be revised to show that Hausers' buyback of David's shares is an appropriate remedy only if it established at trial that Hausers breached their fiduciary duties in refusing to repurchase his shares. David further noted in his response that the trial court inadvertently stated in its order that it was awarding $76,260.80

in liquidated damages. David agreed that this typographical error should be corrected, and that the trial court's order should be revised to reflect a liquidated damage award of $66,260.80, which is twice the amount of the actual damages awarded.

[17] On March 23, 2022, the trial court entered an order amending the award of liquidated damages from $76,260.80 to $66,260.80. It also replaced the portion of the order regarding the equitable remedy of the buyback of David's shares of stock to read as follows:

> The Court further determines that, as a matter of law, a forced buyback of David's shares is an appropriate remedy for shareholder oppression. *G & N Aircraft, Inc. v. Boehm*, 743 N.E.2d 227, 243 (Ind. 2001). *Whether shareholder oppression occurred in this case is a matter for the Court's determination at trial.*

Id. at 164 (emphasis added).

[18] Hausers now appeal.[5]

Discussion and Decision

I. Standard of Review

[19] We review an order for summary judgment de novo, applying the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

[5] This court entered an order granting Hausers' motion to accept jurisdiction over this interlocutory appeal under Indiana Appellate Rule 14(B) on April 29, 2022.

The moving party bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013). Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. *Id.* A genuine issue of material fact exists "where facts concerning an issue that would dispose of the issue are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue." *Five Star Roofing Sys., Inc. v. Armored Guard Window & Door Grp., Inc.,* 191 N.E.3d 224, 236 (Ind. Ct. App. 2022).

[20] Our review of a summary judgment motion is limited to those materials properly designated to the trial court, and we construe the evidence in a light most favorable to the nonmoving party, resolving all doubts as to the existence of a genuine factual issue against the moving party. *Mangold ex rel. Mangold v. Ind. Dep't of Natural Res.,* 756 N.E.2d 970, 973 (Ind. 2001). While a trial court's entry of findings of fact and conclusions of law in its summary judgment order might provide insight into its decision, "they are not binding on this court." *Erie Ins. Exch. v. Craighead,* 192 N.E.3d 195, 199 (Ind. Ct. App. 2022). We further note that cross-motions for summary judgment do not affect our standard of review. We simply "construe the facts most favorably to the nonmoving party in each instance." *Young v. City of Franklin*, 494 N.E.2d 316, 317 (Ind. 1986).

II. Hausers' Claims

A. Nature of the Agreement

[21] Hausers contend that the trial court erred in granting partial summary judgment for David because the Agreement was not an employment contract and there was no guarantee of employment with Hauser, Inc. Thus, Hausers argue that David was an at-will employee, and the designated evidence establishes that his claims against them fail as a matter of law.

[22] At the outset, we note that the primary goal when interpreting a contract is to determine the parties' intent when they entered into the agreement. *Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 752 (Ind. 2018). Where the contract language is unambiguous, the parties' intent is reflected by that language, not by extrinsic evidence. *Ryan v. TCI Architects/Eng'r./Constrs., Inc.,* 72 N.E.3d 908, 917 (Ind. 2017). Unambiguous language in a contract is given "its plain and ordinary meaning in view of the whole contract, without substitution or addition." *Sawyer*, 93 N.E.3d at 752. We do not go beyond the four corners of the contract to investigate meaning. *Id.* If a contract is unambiguous, parol or extrinsic evidence is inadmissible to expand, vary, or explain the instrument "unless there has been a showing of fraud, mistake, ambiguity, illegality, duress, or undue influence." *Ryan,* 72 N.E.3d at 917. A court should construe the language of a contract so as not to render any words, phrases, or terms ineffective or meaningless, and we generally presume that all provisions included in a contract are there for a purpose. *Sunburst Chem., LLC v. Acorn*

Distribs., 922 N.E.2d 652, 654 (Ind. Ct. App. 2010). If a contract is ambiguous, however, the parties may introduce extrinsic evidence as to its meaning, and the interpretation becomes a question of fact. *Broadbent v. Fifth Third Bank,* 59 N.E.3d 305, 311 (Ind. Ct. App. 2016), *trans. denied.*

[23] Construction of the terms of a written contract is a pure question of law. *Tender Loving Care Mgmt., Inc. v. Sherls,* 14 N.E.3d 67, 72 (Ind. Ct. App. 2014). And cases involving contract interpretation are particularly appropriate for summary judgment. *Five Star Roofing Systems,* 191 N.E.3d at 236.

[24] In addressing Hausers' contentions, we initially observe that Indiana follows the presumption that employment is "at-will," unless otherwise specified. *See Trinity Baptist Church v. Howard,* 869 N.E.2d 1225, 1229 (Ind. Ct. App. 2007), *trans. denied*. However, this presumption is a rule of contract construction and not a rule imposing a substantive limitation on the parties' freedom to contract. *Orr v. Westminster Village North, Inc.,* 689 N.E.2d 712, 717 (Ind. 1997). In other words, if the parties choose to include a clear job security provision in an employment contract, the at-will employment presumption may be rebutted. *Id.*

[25] In this case, the Agreement sets forth five non-exclusive reasons for which an employee may be terminated "for cause:" (1) failure to appropriately perform duties; (2) appearing at work intoxicated; (3) disclosing trade secrets and customer lists; (4) unauthorized absences from work exceeding 10 calendar days per month; and (5) insubordination or persistent disregard of the

company's rules. *Appellants' Appendix Vol. 3* at 125. And "if it is determined that the termination was improper, the employee shall be reinstated and fully compensated for the time loss resulting from termination and shall retain such Stock that was sold." *Id.* at 125-26.

[26] Hausers maintain that the "termination for cause" language in the Agreement applies only to the sale of stock rather than to employment security. Therefore, Hausers argue that the Agreement is not an employment contract and David remained an at-will employee with the company.

[27] Under Hausers' interpretation, the provision in the Agreement that an employee must be reinstated if a termination of employment was improper means only that the employee would retain the stock that was sold. Hausers, however, neglect to explain why the language referencing employment with the corporation is in the Agreement. More specifically, they fail to state why the Agreement states that "the *employee will be reinstated and fully compensated for the time loss resulting from termination*. . . . *and* shall retain such Stock that was sold." *Id.* at 125 (emphasis added).

[28] Given the language of the Agreement and construing it as a whole, there is a clear distinction between shareholders in their capacity as a "shareholder" verses the shareholder in his or her capacity as an "employee." To be sure, Hausers' proposed interpretation of the Agreement would render the provision guaranteeing reinstatement entirely meaningless and unenforceable. Put another way, if Hauser Inc. could simply terminate the employee-shareholder

on an at-will basis, thereby bypassing the "for-cause" termination provision, the language in the Agreement guaranteeing reinstatement for improper termination would be of no moment. Therefore, we conclude that the "for cause" termination and guaranteed reinstatement provisions in the Agreement rebutted the at-will employment presumption as a matter of law. In short, David was not precluded from pursuing his claims against Hausers for breach of the Agreement as Hauser, Inc.'s employee.

B. Notice of Poor Work Performance

[29] Hausers claim that the trial court erroneously granted summary judgment for David on the issue of whether he received notice of poor work performance prior to his termination of employment from Hauser, Inc. Hausers argue that the trial court "exceeded its authority under Ind. Trial Rule 56(C)" because that issue was "not before the court." *Appellants' Brief* at 27.

[30] Hausers correctly observe that a trial court's practice of entering summary judgment sua sponte "should be used only rarely and with caution." *Crossno v. State,* 726 N.E.2d 375, 381 (Ind. Ct. App. 2000). But here, it was Hausers who placed the issue before the trial court as to whether David had failed to remedy his employment problems. More specifically, Hausers designated evidence that

> On February 26, 2019, the Executive Committee of A.F. Hauser, Inc. made a determination to discharge David's employment from A.F. Hauser, Inc. for a variety of reasons, including, "*a failure of David Hauser to perform his duties as an employee of the corporation in a manner that would be considered as diligent as he has in*

> *the past and to the best of his ability," . . . and David's failure to cure his employment issues.*

Appellants' Appendix Vol. 2 at 140 (emphasis added).

[31] In response, David designated evidence establishing that there was a genuine issue of material fact as to whether he failed to perform his duties at Hauser, Inc. David also alleged that he did not receive any warning about his work performance and was, therefore, not afforded an opportunity to cure any alleged employment duty defects. *Appellants' Appendix Vol. 4* at 72-73. David also designated the portion of the Agreement in his response to Hausers motion for summary judgment that stated, "no warning need be given to any employee for proper cause *other than unsatisfactory performance of work*." *Id.* at 68 (emphasis added).

[32] At the summary judgment hearing, Hausers argued that the Agreement "does not require prior notice of termination" and "does not somehow provide Plaintiff the right to prior notice of discharge." *Transcript Vol. II* at 21, 22. In light of this argument and the designated evidence that was presented, Hausers invited the trial court to address that issue. As a result, the trial court, at the summary judgment hearing, was obligated to determine which facts were undisputed in accordance with Ind. Trial Rule 56(D):

> If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial

> controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy. . . . Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

[33] Hausers designated no evidence to the trial court that created a genuine issue of material fact as to whether David was given notice of poor work performance. Moreover, Hausers do not direct us to any evidence contradicting David's assertion that he never received any notice about poor work performance. As the designated evidence demonstrates that David did not receive such notice, the trial court properly exercised its authority under T.R. 56(D) in considering the issue and deciding it adversely to Hausers.

C. David's Wage Claim

[34] Hausers contend that the damage award cannot stand because David was an at-will employee and has no right to assert claims under Ind. Code Chap. 22-2-9, Indiana's Wage Claims Act. Thus, Hausers assert that the company "properly and lawfully reduced" David's compensation. *Appellants' Brief* at 29. In the alternative, Hausers maintain that the damage award must be set aside because David failed to offer sufficient evidence to support his wage claim.

[35] As we have determined above, David was not an at-will employee of Hauser, Inc. when he was terminated from employment. To the contrary, the

Agreement was an employment contract that rebutted the at-will presumption during David's employment at Hauser, Inc.[6] And Indiana law prohibits an employer from making any deductions from an employee's pay other than those that are expressly enumerated. Although health insurance premiums are a legitimate deduction, the employee must provide a written authorization for that deduction to be valid. I.C. § 22-2-6-2(a)(3).

[36] Hausers conceded in their designated evidence that David did not authorize the health insurance premium deductions in writing. David did not learn of the decrease in pay until it was noted on his paycheck, and he was not afforded the option of accepting a new salary or quitting Hauser, Inc. In light of these circumstances, the trial court correctly found that Hausers's deductions of David's pay violated the Wage Claims Act as a matter of law.

[37] We also reject Hausers' claim that genuine issues of material fact remain as to the amount of wages it owed David. The designated evidence included the amount of unpaid wages that David presented in his DOL application. Hausers

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[6] As an aside, we note that while Hausers argue that the Wage Claims Act does not apply to at-will employees, the plain language of I.C. § 22-2-9-1(a) applies broadly to any "employer" of "any person in this state." Also, even were we to assume that David was an at-will employee, an employer may alter an at-will employee's compensation on a prospective basis, so long as the employer notifies the employee of the change in advance. Hausers unilaterally deducted the insurance premiums from David's pay "after the fact," which is not permissible. *See, e.g., Highhouse v. Midwest Orthopedic Inst., P.C.,* 807 N.E.2d 737, 739 (Ind. 2004) (holding that when an employer agrees to provide compensation for services, the employee's right to compensation vests when the employee renders the services); *Williams v. Riverside Cmty. Corr. Corp.*, 846 N.E.2d 738, 744 (Ind. Ct. App. 2006) (employee's right to compensation "wholly and indefeasibly vests upon the performance of labor without any additional requirements), *trans. denied*; *see also Todd v. Stewart*, 566 N.E.2d 1077, 1079 (Ind. Ct. App. 1991) (observing that an employer could withhold future bonuses for an at-will employee but not those bonuses that were already earned).

did not direct the trial court to this evidence or argue that the amount of David's unpaid wage claim created a genuine issue of material fact. As Ind. T.R. 56(H) provides, "no judgment rendered on the motion [for summary judgment] shall be reversed on the ground that there is a genuine issue of material fact *unless the material fact and the evidence relevant thereto shall have been specifically designated to the trial court*." (Emphasis added). In accordance with this rule, Hausers waived any claim that there was a genuine issue of material fact regarding the amount of wages that it owed to David.

[38] Waiver notwithstanding, we note that David set forth the full amount of his last paycheck—-$10,000—in the DOL application. Hauser, Inc. subsequently paid David a portion of that amount—$4,186.75. And as this court has previously held, if an employer pays the employee's wages, the employee is no longer entitled to liquidated damages or attorneys' fees for those paid wages. *Gallo v. Sunshine Car Care, LLC*, 185 N.E.3d 392, 401, 402 (Ind. App. 2022) (citing *Brown v. Bucher & Christian Consulting, Inc.*, 87 N.E.3d 22, 28 (Ind. Ct. App. 2017), *trans. denied*. Here, David ultimately deducted from his wage claim the amount that Hauser Inc. had subsequently paid him. That said, none of the designated evidence contradicts the trial court's determination as to the amount that David is owed for the wages that Hauser, Inc. wrongfully deducted. Thus, we decline to set aside the trial court's entry of summary judgment in David's favor with respect to his wage clam.

[39] We further note that because we have determined that David prevails on his wage claim action, he is also entitled to an award of appellate attorneys' fees as

to that claim. *See* Ind. Code § 22-2-9-4(b) (the provisions of I.C. § 22-2-5-2, which allows for an award of reasonable attorneys' fees and costs to an employee in any successful action under the wage payment claims statute, apply to actions under the Wage Claims Act). Thus, we remand this cause to the trial court with instructions that it award costs of the wage claims action to David and to calculate the amount of reasonable appellate attorneys' fees to which David is entitled on that claim.

D. Breach of Fiduciary Duty and Forced Repurchase of David's Stock

[40] Hausers next maintain that the trial court erred in determining that the appropriate remedy for a breach of fiduciary duty is the equitable remedy of a forced repurchase of David's shares. More particularly, Hausers request that we reverse and remand with instructions for the trial court to clarify that the "buyback of shares" remedy is only available if David proves his breach of fiduciary duty claims at trial. *Appellants' Brief* at 31. Hausers further contend that they are entitled to a jury on the breach of fiduciary duty issue.

[41] First, we note that nothing in the trial court's order indicates that it intends to award David damages without proof of liability. In fact, after Hausers filed their motion to correct error, David conceded in his response to the motion that the trial court's original finding that Hausers had breached their fiduciary duties as a matter of law was erroneous. Indeed, David acknowledged that the breach of fiduciary duty question was an issue to be resolved at trial. The trial court thereafter granted Hausers' motion to correct error and modified its order to

state that "whether shareholder oppression occurred in this case is a matter for the Court's determination at trial." *Appellants' Appendix Vol.* at 24.

[42] As for Hausers' claim that a jury should decide whether they breached a fiduciary duty to David and decide the appropriate remedy, *i.e.,* a forced buyback of David's shares, we initially observe that equitable claims are tried to the court and legal claims may be tried to a jury. *Lucas v. United States Bank, N.A.,* 953 N.E.2d 457, 460 (Ind. 2011). As this court observed in *Griffin v. Carmel Bank & Trust Co.*, 510 N.E.2d 178, 183 (Ind. App. 1987), *trans. denied*:

> Nothing . . . is now more surely settled in the law of corporations than the doctrine that any unauthorized act or contract by the directors or a majority of the stockholders of a corporation, which will destroy the existence of the corporation or render it unable to perform its functions, *or any misapplication or diversion of assets to purposes not authorized by its charger, even though all other stockholders may consent, is a breach of trust towards a dissenting stockholder, against which he is entitled to relief in equity.* Therefore, in the absence of estoppel and if he cannot obtain relief through the corporation or its officers, *any stockholder may maintain a bill in equity in his own name to enjoin a waste, misapplication of diversion of its assets, or to enjoin or set aside ultra vires acts or contracts which will result in such a waste, misapplication or diversion, or which may destroy the corporation or render it unable to carry out its objects*.

Id. at 183 (quoting 6 FLETCHER CYCLOPEDIA CORPORATIONS sec. 6901) (emphasis added); *see also G & N Aircraft, Inc. v. Boehm*, 743 N.E.2d 227, 244 (Ind. 2006).

[43] Here, David's breach of a fiduciary duty claim is equitable in nature and must therefore be tried to the court and not to a jury. Thus, we reject Hausers' contention that they have a right to a jury trial on this issue.

III. Conclusion

[44] In light of our discussion above, we conclude that the unambiguous language of the Agreement rebuts the presumption that David was an at-will employee of Hauser, Inc. The Agreement amounted to a contract of employment regarding David's employment with Hauser, Inc., and David was entitled to pursue his claims against Hausers. We further conclude that there is no genuine issue of material fact as to the amount of wages that Hausers wrongfully withheld from David's pay. Thus, we affirm the trial court's judgment with respect to David's wage claim and remand this cause to the trial court with instructions to calculate an award of appellate attorneys' fees to David on that claim, along with the costs of that action.

[45] We also reject Hausers' contention that the trial court must clarify its order as to whether it is obligated to repurchase David's shares of stock in Hauser, Inc. Finally, we note that David's breach of fiduciary duty claims are equitable in nature and are triable by the court and not a jury.

[46] Affirmed and remanded.

Crone, J. and Pyle, J., concur.